

BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY

ORDINANCE NO. 2020-08

**AN ORDINANCE SUPPLEMENTING AND AMENDING
CHAPTER 24: “COMMISSIONS AND COMMITTEES” AND
AMENDING CHAPTER 270: “LAND DEVELOPMENT”
AND AMENDING CHAPTER 450: “ZONING” OF THE
BOROUGH’S REVISED GENERAL ORDINANCES IN
ORDER TO RE-ESTABLISH THE BOROUGH’S SHADE
TREE COMMISSION AND PROTECT TREES WITHIN THE
BOROUGH OF BRADLEY BEACH**

Mayor Engelstad offered the following Ordinance and moved its introduction:

WHEREAS, the Mayor and Council of the Borough of Bradley Beach (the “Borough”) believe it to be in the best interests of the public to amend the Borough’s Revised General Ordinances regarding the planting, care and removal of trees to best protect and preserve these important natural elements to the greatest extent possible;

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Bradley Beach, County of Monmouth, and State of New Jersey as follows:

SECTION 1. Article VI entitled “Shade Tree Commission” of Chapter 24 entitled “Commissions and Committees” of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

ARTICLE VI SHADE TREE COMMISSION

§ 24-29 Intent and purpose.

~~A. The intent of this article is to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the Borough of Bradley Beach.~~

~~B. The purpose of this article is to provide for the creation of a Shade Tree Commission in the Borough of Bradley Beach; define the powers of the Commission; impose penalties for the violation of the rules and regulations of said Commission; and establish a Tree Preservation Ordinance.~~

The purpose of this Article is to provide for the creation of a Shade Tree Commission in the Borough of Bradley Beach and define the powers and duties of the Commission.

§ 24-30 Definitions. Establishment of Shade Tree Commission; Terms; Membership; Officers; Powers.

~~A. As used in this article, the terms hereinafter set forth shall be defined and deemed to have the following meanings:~~

COMMISSION

~~The Shade Tree Commission of the Borough of Bradley Beach, including any of its duly appointed members and any of its duly authorized agents or employees.~~

HERITAGE TREE

~~A tree native to, or adapted to, climatic conditions of this area (e.g., oak, maple, sycamore), having a trunk diameter of 25 inches or more measured at four feet above the ground. For this area, such a tree would be at least 100 years old.~~

PERMIT

~~Written permission of the Commission. Whenever, pursuant to any provision of this article, the Commission shall have occasion to pass upon an application for a permit, it shall, in determining whether or not to issue such permit, take into consideration the nature, species, size, age and condition of any tree involved; the location thereof in the street or park; the planting, care, protection, maintenance, or removal procedures involved; the public safety and welfare; and the improvement and advancement of the shade tree plan or program of the Commission.~~

PERSON

~~Any individual, firm, partnership, or corporation, or any combination thereof. Where in the proper context it is so required, this term may be construed to designate the plural as well as the singular.~~

PLANT CONSTRUCTION

~~Any public utility company's poles, wires, cables, subsurface conduits, pipes, manholes and appurtenant facilities installed in a street.~~

PLANTING STRIP

~~This land between the curb and the sidewalk. The planting strip is part of the Borough right-of-way.~~

STREET

~~Any road, avenue, street, or highway dedicated to the public use for street purpose. A "street" shall be deemed to include all portions lying between the dedicated or established right of way and/or planting easement thereof, said lines being identical with the front property lines of lands abutting the street.~~

TREE

~~Any woody perennial plant having a main stem diameter minimum of one inch measured at a point six inches above the ground.~~

~~B. Any term or provision of this article that contemplates, directs, regulates or prohibits the doing of any act may, in applicable cases and where the context so requires, be construed to include the causing, allowing, permitting or suffering of such act to be done by others under the direction, control or supervision of the person charged therewith. Every such act shall be deemed to be within the scope of this article, regardless of whether it is a deliberate, intentional or purposeful act, or a careless, negligent or unintentional act.~~

- A. There is hereby established a Commission which shall be known as the Shade Tree Commission of Bradley Beach. The Commission shall be comprised of five (5) members, all of whom shall be appointed by the Mayor and shall serve without compensation.
- B. The terms of office of the Commission members shall be five (5) years; with the terms of those members first appointed beginning the day of appointment and expiring on the last day of December following respective initial terms of one, two, three, four and five years; the terms of said initial appointments to be designated in their respective appointments. All other appointments, except to fill vacancies, shall be made to take effect the first day of January of each year for a full term of five years. Any vacancy occurring in the membership of the Commission by reason of death, resignation or removal shall be filled for the unexpired term by an appointment by the Mayor with recommendations of the Commission, if any.
- C. The Shade Tree Commission shall organize annually by the election of one of its members as Chairperson and the appointment of a Secretary.
- D. The Shade Tree Commission shall have the power and duty:
1. To recommend programs and plans for the consideration of the Borough Council with respect to the purchase, planting and care, rearing, trimming, preserving and control of trees throughout the Borough, with specific emphasis on the care and protection of trees located on public rights-of-way, including Main Street.
 2. To encourage arboriculture.
 3. To promote the recognition and care of heritage trees throughout the Borough of Bradley Beach. For purposes of this Article, a heritage tree is any tree native to, or adapted to, climatic conditions of this area (e.g., oak, maple, sycamore), having a trunk diameter of 25 inches or more measured at four feet above the ground. A heritage tree also includes any tree, regardless of size or age, dedicated to or commemorating an individual or event, as may be maintained by the State, County, or the Borough of Bradley Beach.
 4. To keep records of its meetings and make an annual report to the Governing Body.

§ 24-31 ~~Establishment of Shade Tree Commission; terms; membership; officers; powers.~~ Appropriations Authorized.

- ~~A. The regulation, planting, care and control of shade and ornamental trees and shrubbery upon or in the Borough of Bradley Beach, except for county parkways, shall be exercised by and under the authority of a Commission of no less than five nor more than seven residents of the Borough of Bradley Beach. The Commission shall be known as the "Shade Tree Commission of Bradley Beach." The members of the Commission shall be appointed by the Mayor and shall serve without compensation.~~
- ~~B. The terms of office of the Commission members first appointed shall begin the day of appointment and continue for the respective periods of one, two, three, four and five years; the terms of said appointments to be designated in their respective appointments. All other appointments, except to fill vacancies, shall be made to take effect the first day of January of~~

~~each year for a full term of five years. Any vacancy occurring in the membership of the Commission by reason of death, resignation or removal shall be filled for the unexpired term by an appointment by the Mayor with recommendations of the Commission.~~

~~C. The Shade Tree Commission shall organize annually by the election of one of its members as Chairperson and the appointment of a Secretary.~~

~~D. The Shade Tree Commission shall have the power:~~

- ~~1. To exercise full, sole and exclusive control over the regulation, planting, and care of shade and ornamental trees and shrubbery now situate, or which may hereinafter be planted in or upon any public road or park of the Borough and including the planting, trimming, spraying, care and protection of the same for the public good; the right to regulate and control the ground surrounding the same so far as may be necessary for their proper growth, care and protection; the right to remove or require the removal of any tree or part thereof dangerous to public safety.~~
- ~~2. To encourage arboriculture.~~
- ~~3. To administer treatment to or remove any tree upon private property which is believed to harbor disease or insects readily communicable to neighboring healthy trees in the Borough and enter upon private property for that purpose, with the consent of the owner thereof, provided the suspected condition is first confirmed by certificate issued on behalf of the New Jersey Department of Agriculture or designee. Such treatment or removal will be at the homeowner's expense.~~
- ~~4. To notice any resident where there is a tree on private property that presents a hazard to any Borough right of way. The noticed resident will have 30 days, unless it is deemed an emergency, to remediate the situation. If the resident does not remediate the hazard in the allotted time, the Borough will do so and assess the resident for the cost of the remediation in the resident's next tax bill.~~
- ~~5. To call meetings and to fix agendas consistent with the powers and duties herein provided.~~
- ~~6. To review and make recommendations to the Planning Board or Zoning Board relative to any site plan, development application or variance application presented within the Borough of Bradley Beach consistent with the purpose of this article.~~
- ~~7. To promote the recognition and care of heritage trees throughout the Borough of Bradley Beach.~~

The Mayor and Council may authorize funds for the expenses of the Shade Tree Commission. The Commission may appoint such clerks and other employees as it may require and as shall be within the limits of the funds so appropriated by the Borough Council for the operation of the Commission. The Borough Council may also appropriate funds for the purchase of trees and shrubbery, the purchase of necessary equipment and materials, and for the costs of any other related service(s) for the preservation of trees and shrubbery within the Borough of Bradley Beach.

§ 24-32 Permit Requirements. (Reserved)

~~A. No person shall do any of the following acts to any tree on Borough property (i.e., right of way, public park) without obtaining a permit, at no cost, from the Shade Tree Commission:~~

- ~~1. Cut, prune, climb with spikes, break, damage, remove or kill.~~
- ~~2. Cut, disturb or interfere in any way with any root.~~
- ~~3. Spray with any chemical.~~
- ~~4. Fasten any rope, wire, sign or other device.~~
- ~~5. Remove or damage any guard or device placed to protect the tree.~~
- ~~6. Conduct razing, removal or renovation of any structure, including but not limited to sidewalks, if deemed by the Commission to be damaging to neighboring street trees.~~
- ~~7. Remove soil from the planting strip, either trenching or otherwise.~~
- ~~8. Cover all or any part of the planting strip with concrete or other impervious material.~~
- ~~9. Construct new sidewalks or driveways with any material whatsoever within 5 feet of a tree.~~
- ~~10. Plant any tree or any plant within the planting strip or any designated area under control of the Commission.~~

~~B. Required permits for all public utilities:~~

- ~~1. A public utility shall first obtain a permit from the Shade Tree Commission for the trimming or removal of any tree or other vegetation on any Borough street, Borough right of way or other Borough property.~~
- ~~2. The Shade Tree Commission may grant to a public utility a blanket permit for the installation and maintenance of subsurface and aboveground plant.~~
- ~~3. A public utility and/or the Public Works for the Borough of Bradley Beach may, during periods of emergency, and without first obtaining a permit from the Shade Tree Commission, make emergency pruning/removal, install temporary attachment to trees, and make emergency subsurface repairs.~~
- ~~4. All tree work done while trimming around utility lines in and along Borough rights of way shall be target pruning. All trimming is to be conducted with consideration for the health of any tree while allowing proper electrical line clearance. Any improper work will void the issued permit, and the violator will be subject to a fine of \$1,000 for each violation. Any work performed in accordance with current recommendations and approved standards of the~~

~~National Arborist Association, American National Standards Institute (ANSI), ANSI Z133.1 and 300A and the New Jersey Certified Tree Experts Board.~~

~~C. Permit process:~~

- ~~1. Any property owner or designee may make application for an appropriate permit to be issued by the Shade Tree Commission by submitting such application, which shall be available at the Bradley Beach Municipal Building, Public Library, or the web page www.bradleybeachonline.com.~~
- ~~2. Upon receipt of an application for an appropriate permit, the Shade Tree Commission shall forthwith review the application and issue the appropriate permit to the property owner or designee in an expedited fashion.~~
- ~~3. In the event inspection of the application raises issues concerning the care of a shade tree, the Commission may require the property owner to appear at a regularly scheduled Shade Tree Commission meeting to explain the nature of the work to be performed before such a permit is issued by the Commission.~~
- ~~4. In the event a permit is denied, the property owner or designee may request a hearing before the full Commission and present any arguments in support of the requested permit.~~
- ~~5. The Commission shall retain copies of all permit applications, their resolutions, and the nature of any work performed.~~

§ 24-33 Protection of Shade Trees. (Reserved)

- ~~A. In the erection, alteration, or repair of any structure or building within the Borough of Bradley Beach, the owner or designee shall place such guards around all nearby public shade trees as will prevent injury or damage to such trees.~~
- ~~B. No person shall use or operate any power equipment, bulldozer or any other implement or tool in such a manner likely to cause injury or damage to any public shade tree within the Borough of Bradley Beach.~~
- ~~C. No person shall place or distribute, near a public tree, chemicals, including, but not limited to, oil or gasoline deleterious to tree health.~~

§ 24-34 Violations and penalties; replacement assessment; disposition of funds. (Reserved)

- ~~A. Any person who violates any of the provisions of this article or who fails to comply with the terms and provisions of any permit issued pursuant hereto shall, upon conviction in Municipal Court thereof, pay a fine of not less than \$200 nor to exceed \$1,000 at the discretion of the court. Each day that a violation shall continue shall constitute a separate offense.~~

- ~~B. In addition to the penalties authorized in Subsection A, the Shade Tree Commission may impose an additional penalty of a replacement assessment to the Borough of Bradley Beach. This assessment is based upon the value of the tree as determined by a certified tree expert retained by the Commission for this purpose or by the formula of not exceeding \$27 per square inch of cross section of the trunk measured 4.5 feet above ground level. The tree's species variety, location and condition shall modify this amount at the time of damage or destruction.~~
- ~~C. All moneys or funds collected hereunder, either as fines, penalties or otherwise under any provision of this article or amendment thereto, shall be forthwith turned over to the Borough Chief Financial Officer, shall be placed to the credit of the Shade Tree Commission of the Borough, and shall be subject to be drawn upon by the Commission for the conduct of its performance hereunder.~~

§ 24-35 Appeals. (Reserved)

~~Any person may appeal a denial of a permit by the Shade Tree Commission. Any appeal shall be made directly to the Mayor and Council, which appeal will be final and binding. Said appeal must be filed within 10 days after denial of the permit with the Borough Clerk.~~

SECTION 2. Section 25 entitled “Shade trees and grass planting strips” of Chapter 270 entitled “Land Development” of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

§ 270-25 Shade trees and grass planting strips.

- A. A grass planting strip shall be provided between the curb and sidewalk along all streets in residential zones. The grass planting strip shall be from the back of curb to the edge of sidewalk and shall be used for the planting of required street trees. Artificial grass is not permitted. The Borough will not be liable for any damage accrued to the artificial grass while any work, snow/ice removal or Act of God transpires. No prior notification is required by the Borough or contractor for any work being performed. No other material, including, but not limited to, brick or concrete pavers, concrete, asphalt or stones, shall be placed in the planting strip, except that, for properties without driveways, a walkway not more than three feet wide may be placed within the grass planting strip as an extension of the walkway to the dwelling. Current properties without natural grass as of date of this adoption shall be grandfathered with the sole responsibility of the property owner.
- B. Shade trees shall be provided in all major residential subdivisions. Trees shall be planted within the subdivision along each side of the street at proper intervals and in types, sizes and locations conducive to healthy growth with graded and seeded or sodded planting strips and according to any standards adopted by the governing body ~~or the Shade Tree Commission~~ so as not to interfere with street paving, sidewalks, or utilities.
- C. All trees should be of nursery stock of an approved species, a minimum of two-and-one-half-inch caliper, grown under the same climatic conditions as at the location of the development. They shall be of symmetrical growth, free of insect pests and disease, suitable for street use, durable under the maintenance contemplated, ~~and approved by the Shade Tree Commission.~~

SECTION 3. Section 21 entitled “Removal of trees” of Chapter 450 entitled “Zoning” of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

§ 450-21 Removal of trees.

- A. It shall be unlawful for any person, firm or corporation not explicitly exempted by this section to remove or injure any live tree within the Borough of Bradley Beach, the trunk of which exceeds three inches in diameter measured at a point two feet above the ground, in any zone, without first obtaining ~~approval to do so from the Planning Board~~ a permit from the zoning officer.
- B. ~~In any one (1) calendar year, a~~A homeowner who wishes to remove three (3) trees or fewer from the lot on which he or she resides is exempted from this section, except for shade trees within the public right-of-way. Removal of trees within a public right of way, since these trees are on Borough property, are exempt from this section, but are under the jurisdiction of the Shade Tree Commission and subject to the regulations and limitations under the authority of that Commission. A further exemption shall be granted to any homeowner who, in addition to the three-tree limit referenced hereinabove, wishes to remove any diseased trees. The removal of any additional diseased trees must be approved by the Department of Public Works. A diseased tree shall be defined as a tree that is irretrievably diseased or infested with infections such that no available treatment can cure the disease or infestation.
- C. ~~Prior to taking any action on a request for any approval that requires removal of any tree regulated by this section, the Planning Board shall seek and obtain a recommendation from the Shade Tree Commission as it pertains to removal of the regulated tree or trees. A public utility shall first obtain a permit from the zoning officer for the trimming or removal of any tree on any Borough street, Borough right-of-way, or other Borough property. The zoning officer may grant to a public utility a blanket permit. All tree work done while trimming around utility lines in and along Borough rights-of-way shall be target pruning. All trimming is to be conducted with consideration for the health of any tree while allowing proper electrical line clearance. Work performed shall be in accordance with current recommendations and approved standards. A public utility may, during periods of emergency and without first obtaining a permit, make emergency pruning and/or tree removal.~~
- D. ~~The Planning Board shall permit the cutting or removal of trees on public or private lands in the Borough under the following circumstances: Permit Process:~~
1. ~~If their presence would cause hardship, or endanger persons or property, or substantially interfere with a permitted use of a property. Any property owner or designee not specifically exempted by Section 450-21 above, may apply for a tree removal permit by submitting an application to the zoning officer or his or her designee.~~
 2. ~~In areas to be occupied by buildings, driveways or recreation areas, and within a distance of 15 feet around the perimeter of such buildings, depending on tree species and conditions to~~

~~be reasonably determined by the Planning Board or the Borough Construction Official.~~
Upon application for a tree removal permit, the applicant shall be charged the following fees:

- (a) Application Fee: Thirty-five dollars (\$35).
 - (b) For all properties: after the first three (3) trees, fifteen dollars (\$15) per tree to be removed, up to a maximum of six hundred dollars (\$600) for each acre, or part thereof, to be cleared.
 - (c) All monies or funds collected hereunder shall be forthwith turned over to the Borough Chief Financial Officer, shall be placed to the credit of the Borough Council, and shall be subject to be drawn upon by the Borough Council for the conduct of its performance hereunder, included but not limited to the consulting or hiring of an arborist.
3. Upon receipt, the zoning officer shall review the application and issue the permit if the proposed tree removal satisfies the requirements set forth in section (E).
4. In the event a permit is denied, the property owner or designee may request a hearing before the Borough Council. Said request must be made to the Borough Clerk within ten (10) days after denial of the permit.
- E. ~~No building permit shall be issued until the Planning Board has approved a written plan of tree removal. The applicant shall submit such a plan showing all proposed tree removal in relation to the survey stakes marking each dwelling, driveway or other land use requiring such removals. In addition, it shall be indicated on the plan or in an accompanying report which of the exceptions allowed herein are believed to apply to each removal. The removal of trees on public or private lands in the Borough is permitted under the following circumstances:~~
- 1. If their presence would cause hardship, or endanger persons or property; or
 - 2. If they substantially interfere with a permitted use of a property; or
 - 3. If they are located in areas to be occupied by buildings, driveways or recreation areas, and within a distance of fifteen (15) feet around the perimeter of such buildings.
- F. ~~No material, machinery or temporary soil deposits shall be placed within six feet of any existing tree trunk or stem. Any regrading shall require, where necessary, that all trees remaining as per Subsection E be welled to protect the root structure from damage. The applicant shall submit such a plan showing all proposed tree removal in relation to the survey stakes marking each dwelling, driveway or other land use requiring such removals. In addition, it shall be indicated on the plan or in an accompanying report which of the grounds allowed herein are believed to apply to each removal.~~
- G. ~~Any applicant aggrieved by the provisions of this chapter shall have the right to appeal the decision of the Planning Board or the Zoning Officer to the Zoning Board of Adjustment. Any person who violates any of the provisions of this article shall, upon conviction in municipal court thereof, pay a fine of not less than \$200 nor to exceed \$1,000 at the discretion of the court. Each day that a violation shall continue shall constitute a separate offense. In addition~~

to the fine authorized in subsection (1) the court may impose an additional penalty of a replacement assessment to the Borough of Bradley Beach for the damage or removal of trees on public property or in public rights-of-way. This assessment is based upon the value of the tree as determined by a certified tree expert or by the formula of not exceeding \$27 per square inch of cross section of the trunk measured 4.5 feet above ground level. The tree's species, variety, location and condition shall be considered at this time of damage or removal. All monies or funds collected hereunder shall be forthwith turned over to the Borough Chief Financial Officer, shall be placed to the credit of the Borough Council, and shall be subject to be drawn upon by the Borough Council for the conduct of its performance hereunder, included but not limited to the consulting or hiring of an arborist.

SECTION 4. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 5. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Bradley Beach, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Bradley Beach are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 6. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Bradley Beach for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough's Mayor & Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

SECTION 7. This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with the Monmouth County Planning Board pursuant to N.J.S.A. 40:55D-16.

SO ORDAINED as aforesaid.

ERICA KOSTYZ
Deputy Municipal Clerk

GARY ENGELSTAD
Mayor

Introduced: March 24, 2020

Date of Hearing and Adoption: